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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

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6 BRIAN EUGENE LEPLEY,
7 Plaintiff,

8 v.

9 STATE OF NEVADA ET AL.,
10 Defendants.

Case No. 2:16-cv-02848-RFB-DJA

ORDER

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12 This matter is before the Court on Plaintiff's Motion for Trial before Magistrate Judge
13 (ECF No. 61), filed on July 15, 2019. Defendant Joseph Dugan filed a Response (ECF No. 62)
14 on July 26, 2019. Plaintiff requests that the parties agree to consent to trial by a magistrate judge
15 and use of the Short Trial Program. Defendant opposes Plaintiff's request. Both parties must
16 consent pursuant to 28 U.S.C. § 636(c) so Plaintiff's Motion is denied without prejudice. He may
17 meet and confer with Defendant on this issue and if all parties consent, they should utilize the
18 "AO 85 Notice of Availability, Consent, and Order of Reference - Exercise of Jurisdiction by a
19 U.S. Magistrate Judge" form on the Court's website – www.nvd.uscourts.gov – and manually file
20 the form with the Clerk's Office.

21 This matter is also before the Court on Plaintiff's Motion to Compel (ECF No. 65) filed
22 on August 13, 2019, Motion to Compel (ECF No. 66) filed on August 20, 2019, Motion to Waive
23 Defendant's Response (ECF No. 67) filed on August 27, 2019, and Motion for Scheduling Order
24 (ECF No. 68). Preliminarily, neither of Plaintiff's Motions to Compel (ECF Nos. 65-66)
25 complies with Local Rule IA 1-3(f) or 26-7(c) because they lack any good faith effort to meet and
26 confer and declaration setting forth the details and results of the meet and confer. Further, in his
27 Motion to Compel (ECF No. 65), Plaintiff requests that the Office of the Attorney General
28 respond to the Court's Order ECF No. 58, which directed the Clerk of the Court to electronically

1 serve a copy of its order and a copy of Plaintiff's first amended complaint (ECF No. 41) on the
2 Office of the Attorney General. However, the Court's Order ECF No. 58 specified that such
3 action did not indicate acceptance of service. Specifically, the Court indicated that service "must
4 be perfected within ninety (90) days from the date of this order" and the Attorney General's
5 Office shall file a notice advising the Court any Defendants for which it was accepted service and
6 any Defendants for which is could not accept service. (ECF No. 58). The Office of the Attorney
7 General complied with the Court's Order by filing Acceptance of Service (ECF No. 63), which
8 accepted service for Defendant Joseph Dugan only on July 31, 2019. Accordingly, Defendants
9 High Desert State Prison and Doctor Wilson are the only remaining defendants that the Attorney
10 General's Office did not accept service. Therefore, Plaintiff's Motion to Compel (ECF No. 65) is
11 denied.

12 As to Plaintiff's Motion to Compel (ECF No. 66), he seeks to compel Defendants to
13 respond to his complaint. However, Defendant Joseph Dugan is the only defendant who has
14 appeared by accepting service on July 31, 2019 so his response to Plaintiff's complaint is not yet
15 due. Similarly, Plaintiff's Motion to Waive Defendant's Response (ECF No. 67) is also
16 premature as the time has expired for Defendant Joseph Dugan to respond to the complaint and
17 service has not been perfected on the other two remaining defendants. Therefore, Plaintiff's
18 Motion to Compel (ECF No. 66) and Motion to Waive Defendant's Response (ECF No. 67) are
19 denied.

20 Finally, Plaintiff requests for a discovery plan and scheduling order to be issued (ECF No.
21 68), but this request is premature. Local Rule 26-1 provides for the parties to conduct a Federal
22 Rule of Civil Procedure 26(f) meeting within 30 days after the first defendant answers or
23 otherwise appears and file a stipulated discovery plan and scheduling order within 14 days after
24 the conference. Neither of these two dates have occurred and therefore, the Court will deny
25 Plaintiff's Motion for Scheduling Order (ECF No. 68).

26 IT IS THEREFORE ORDERED that Plaintiff's Motion for Trial before Magistrate Judge
27 (ECF No. 61) is **denied without prejudice**.

28 IT IS FURTHER ORDERED that Plaintiff's Motion to Compel (ECF No. 65) is **denied**.

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IT IS FURTHER ORDERED that Plaintiff's Motion to Compel (ECF No. 66) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion to Waive Defendant's Response (ECF No. 67) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Scheduling Order (ECF No. 68) is **denied**.

DATED: August 29, 2019



DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE